

RQ-803

JAMES M. KUBOVIK  
COUNTY ATTORNEY  
BRAZOS COUNTY, TEXAS

TELEPHONE  
409/361-4300

300 E. 26th  
SUITE #325  
BRYAN, TEXAS 77803

RECEIVED

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Opinion Committee

April 17, 1995

SJS

Dan Morales  
Office of Attorney General  
P. O. Box 12548, Capitol Station  
Austin, TX 78711

FILE - ML-33083-95  
I.D. # 33083

Dear Sir:

Pursuant to the Government Code, § 402.042, I am requesting an opinion about the following:

Question:

Can the County withhold from a county employee's current wages a repayment amount for a defaulted student loan when directed to do so by an administrative garnishment "ORDER OF WITHHOLDING FROM EARNINGS" from the Texas Guaranteed Student Loan Corporation, a Texas non-profit corporation established by statute, and when the authority for the administrative garnishment "ORDER" comes from federal law?

Brief response:

No, The County cannot be required to withhold an amount from an employee's current wages because the Texas Education Code limits the Texas Guaranteed Student Loan Corporation to recovery by bringing suit against the defaulting party, the Texas Revised Civil Statutes grant no authority to a non-profit corporation to act inconsistently with any laws of the State of Texas, and the Texas Constitution prohibits garnishment from current wages except for the enforcement of court-ordered child support payments.

The Brazos County Auditor's office has received an "ORDER OF WITHHOLDING FROM EARNINGS" from the Texas Guaranteed Student Loan Corporation directing the county to withhold from a county employee's disposable pay an amount for repayment of a defaulted student loan. Public Law 102-164; 20 U.S.C. sec. 1095a, et seq., the federal law that authorizes the administrative garnishment of the wages of an individual who is not making required repayment of

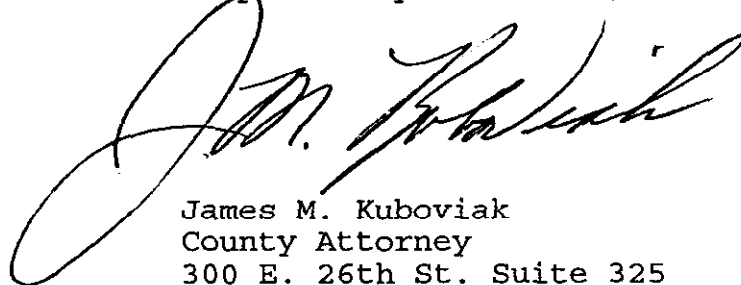
a federally guaranteed student loan, is cited as the authority for this "ORDER". The "ORDER" further directs the withholding of an amount that does not exceed ten percent (10%) of the garnishee's disposable pay for each pay period, or the amount permitted by 15 U.S.C. 1673.

The Texas Education Code, Chapter 57, established the Texas Guaranteed Student Loan Corporation, creating it to administer the student loan program and giving it all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). Tex. Educ. Code Ann. sec. 57.11. The Texas Education Code authorizes the corporation to bring suit against the student borrower who defaults on a loan where the corporation was required to honor the guarantee. Tex. Educ. Code Ann. sec. 57.47. A non-profit corporation must act within the scope of the Non-Profit Corporation Act. Tex. Rev. Civ. Stat. Ann. art 1396-2.02 (B).

Garnishment is available to a plaintiff if the plaintiff has a valid, subsisting judgment against a defendant. Tex. Prac. & Rem. Code Ann. sec. 63.001. There is no provision in the Texas Statutes for administrative garnishment. Even if the Texas Guaranteed Student Loan Corporation obtains a valid judgment against an individual for an amount due on a defaulted loan and chooses garnishment as a remedy under State statutes, current wages are exempt from garnishment. Tex. Civ. Prac. & Rem. Code Ann. sec. 63.004. No current wages for personal services shall ever be subject to garnishment, except for the enforcement of court-ordered child support payments. Tex. Const. art XVI, sec. 28.

Because the TGSLC has exceeded its statutory authority to collect from a defaulting party, and because the Texas Constitution specifically prohibits garnishment from current wages except for court ordered child support payments, the County should not comply with the "ORDER OF WITHHOLDING FROM EARNINGS".

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "J.M. Kuboviak".

James M. Kuboviak  
County Attorney  
300 E. 26th St. Suite 325  
Bryan, Texas 77803  
(409) 361-4300  
FAX (409) 361-4357  
SBN 11745700